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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

The Pay Telephone Reclassification  
and Compensation Provisions of the  
Telecommunications Act of 1996. )

CC Docket No. 96-128

RBOC/GTE/SNET Payphone Coalition  
Petition for Clarification )

NSD File No. L-99-34

**REPLY COMMENTS OF CALL PROCESSING, INC.**

Call Processing, Inc. ("CPI"), by its attorneys, respectfully submits the following Reply Comments in response to the Commission's *Public Notice*<sup>1</sup> seeking comment on various petitions for reconsideration and clarification of the *Second Order on Reconsideration*<sup>2</sup> in the above captioned matter.

**I. INTRODUCTION**

CPI is a provider of interstate and international prepaid calling card services. Given the nature of prepaid calling cards, a significant percentage of the traffic CPI handles originates from payphones. Thus, CPI has a significant interest in this proceeding since the adoption of WorldCom, Inc.'s ("WorldCom's") proposal would require it -- like many other prepaid service providers -- to either 1) no longer accept calls originated from payphones; or 2) pay compensation on uncompleted calls and pass such non-cost based charges on to consumers.

<sup>1</sup> Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration, *Public Notice*, DA 01-1967 (Rel. Aug. 20, 2001) 66 Fed. Reg. 46793 (Sept. 7, 2001).

<sup>2</sup> *In re The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*; RBOC/GTE/SNET Payphone Coalition Petition for Clarification, *Second Order on Reconsideration*, CC Docket No. 96-128, FCC 01-109 (Rel. April 5, 2001) ("Second Order on Reconsideration").

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As shown below, equitable alternatives exist to WorldCom's proposal which should be considered by the Commission. Specifically, the Commission should consider either a simple and verifiable quarterly certification or, alternatively, a Percent Completed Calls ("PCC") approach subject to a verification requirement.

The commenting parties have overwhelmingly demonstrated that redefining the term "completed call" pursuant to WorldCom's proposal would be both imprudent and contrary to well-established legal precedent. Even if the Commission wanted to do so, it would first have to initiate a rulemaking proceeding.

The Commission should clarify that Switch-Based Resellers ("SBRs") may enter into private contractual arrangements for compensating payphone service providers ("PSPs"). Finally, the record in this proceeding clearly demonstrates that WorldCom's proposal would vest facilities-based carriers ("FBCs") with a significant unfair competitive advantage over SBRs as well as harm consumers. Consistent with the recommendations set forth below, WorldCom's proposal (and others like it) should be rejected.

## **II. EQUITABLE ALTERNATIVES EXIST WHICH SHOULD BE CONSIDERED BY THE COMMISSION**

The proposal by WorldCom to redefine "completed call" to require compensation to be paid on all calls that reach a SBR's switch would promote a highly flawed payphone compensation scheme. As the majority of commenting parties have demonstrated, the scheme advocated by WorldCom would competitively favor FBCs while disadvantaging SBRs; result in grossly inaccurate,

non-cost based compensation results; and ultimately disadvantage consumers.<sup>3</sup> Simple, equitable alternatives exist which should be carefully considered by the Commission.

CPI urges the Commission to consider either a simple quarterly certification (by which SBRs would certify to FBCs that PSPs have been compensated) or, in the alternative, a PCC method similar to that proposed by the International Prepaid Communications Association (“IPCA”). Under both approaches, CPI suggests that auditability and verification be ensured by means of Call Detail Records (“CDRs”) which would be subject to a two year record keeping requirement. Instances of improper certification by SBRs could be addressed by FBCs or PSPs through the Commission’s enforcement process. Each of these approaches is briefly addressed below.

A. Quarterly Certification

CPI recommends that the Commission adopt a simple certification process whereby quarterly certifications by SBRs would be submitted to FBCs, attesting that the respective PSPs from which calls to such SBRs have been originated have been compensated. Such a certification will eliminate the uncertainty of which WorldCom complains in its Petition.<sup>4</sup>

This quarterly certification would be supported in two ways. First, the certification should be subject to verification at the request of either the PSP or FBC through the SBRs producing CDRs covering applicable traffic for the certification period. This would allow a precise accounting in the event that PSPs or FBCs desire to verify the certification. Second, the Commission could mandate that, to the extent not already required, CDRs be retained for a period of two years to permit

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<sup>3</sup> See, e.g., Comments of The Ad Hoc Resellers Coalition (“ARC”) at 5-6.

<sup>4</sup> See WorldCom, Inc., Petition for Declaratory Ruling for Reconsideration, (filed May 29, 2001) at 2-4.

verification, if needed.

B. Percent Completed Calls Method

As an alternative to quarterly certification, the Commission should adopt a strengthened version of the PCC method advocated by the IPCA. As explained by the IPCA, under the PCC method, FBCs would accept a calculation of each SBR's call completion percentage, calibrated according to the carrier's actual call volume.<sup>5</sup> The FBC would remit to the PSP quarterly a gross sum of compensation representing that percentage of calls out of the total volume of calls for its SBR customers that reach the FBC switch.<sup>6</sup> The IPCA suggests that each SBR's PCC factor be subject to audit.<sup>7</sup>

CPI endorses this approach, but would propose that it be strengthened consistent with the two suggestions proffered above with respect to quarterly certification. First, the PCC should be subject to audit by request of either the PSP or the FBC. In the case of an audit, a SBR would be required to produce CDRs covering all applicable traffic which would allow a precise accounting. Second, the Commission should mandate, to the extent not already required, that such CDRs be retained for a period of two years to permit such audits if needed.

Thus, to address the concerns of WorldCom and other FBCs, the Commission should consider either a simple and verifiable quarterly certification or, alternatively, a PCC method subject to a verification requirement.

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<sup>5</sup> See Comments of the IPCA at 12-14.

<sup>6</sup> See *id.* at 13.

<sup>7</sup> See *id.* at 13.

### **III. THE COMMISSION MUST NOT ABANDON ITS DEFINITION OF “COMPLETED CALL”**

CPI joins other commenting parties<sup>8</sup> in urging the Commission to reject WorldCom’s request that the Commission abandon its current definition of “completed call.” In its *First Payphone Compensation Order*, the Commission unequivocally concluded that “a ‘completed call’ is a call that is answered by the called party”<sup>9</sup> for purposes of Section 276 (b)(1)(A) of the Telecommunications Act of 1934 (“The Act”). WorldCom suggests, however, that the Commission now abandon its definition of “completed call” in favor of defining it as “one that is either completed on the underlying carrier’s network, or one that is handed off to its SBR customers that do not have prior agreements with all [PSPs] to pay dial around compensation.”<sup>10</sup>

CPI believes that the commenting parties have overwhelmingly demonstrated that implementing WorldCom’s request would be both contrary to well-established precedent and imprudent. Moreover, even if the Commission wanted to do so, it would first have to initiate a rulemaking proceeding.

CPI cannot overemphasize the importance of Ascent’s analysis of the substantial body of both Commission and judicial precedent that stresses the end-to-end nature of communications and views interstate communications as extending from the call’s origination to its ultimate completion,

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<sup>8</sup> See, e.g., Comments of the Association of Communications Enterprises (“Ascent”) at 2-13; Comments of the IPCA at 5-9; and Comments of IDT Corporation (“IDT”) at 23-30.

<sup>9</sup> *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, CC Docket No. 96-128, (Rel. Sept. 20, 1996) 11 FCC Rcd. 20541, 20573 (1996).

<sup>10</sup> See WorldCom Petition at 4.

irrespective of intermediate switching.<sup>11</sup> Ascent cites Teleconnect Co. v. Bell Telephone Company of Pennsylvania (Memorandum Opinion and Order), 10 FCC Rcd. 1626, 1629 (1995) (*subsequent history omitted*), in which the Commission held “[b]oth court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications.” The Commission went on to conclude that interstate communication itself “extends from the inception of a call to its completion, regardless of any intermediate facilities” *See id.* Thus, as argued by Ascent, adopting WorldCom’s misguided approach would not only overturn the Commission’s definition of “completed call” adopted in CC Docket No. 91-35, but also ignore years of well established Commission and judicial precedent.

Even if the Commission were to decide to change its definition of “completed call,” it cannot do so without initiating a notice and comment rulemaking. As noted by Ascent in its Comments,<sup>12</sup> under Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, the Commission must initiate a notice and comment rulemaking before it may modify its existing rules by redefining the term “completed call.”

**IV. THE COMMISSION SHOULD CLARIFY THAT SBRs  
MAY ASSUME DIRECT LIABILITY FOR COMPENSATING PSPs  
AND ALLOW THE CONTINUING USE OF PRIVATE AGREEMENTS**

Several commenting parties have stressed the importance of promoting a payphone compensation scheme that will encourage, or at least permit, the continuing use of private arrangements by carriers with PSPs or third party clearing houses for the payment of payphone

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<sup>11</sup> See Comments of Ascent at 7-10.

<sup>12</sup> See *id.* at 2-4.

compensation.<sup>13</sup>

Section 64.1310(b) of the Commission's Rules and the Commission's *Second Order on Reconsideration* expressly permit SBRs and PSPs to enter into private contractual arrangements with each other for direct payment of compensation. This market-based approach -- the conceptual foundation of the Commission's payphone compensation mechanism -- should not be compromised or overturned.

CPI joins IDT in its request that the Commission clarify that a SBR may still enter into private arrangements with PSPs for direct payment of compensation to PSPs. CPI raises this concern in light of recent actions by WorldCom and other FBCs attempting to coerce SBRs to remit all PSP payments directly to them, which effectively nullifies the SBRs' existing contractual relationships with clearing housings and PSPs. The Commission should clarify that in instances where an agreement exists between a carrier and a PSP, the first FBC is relieved of its compensation obligation, allowing the agreement to control.

The Commission's market-based approach which allows SBRs and PSPs to enter into private contractual arrangements is successfully facilitating the compensation of many PSPs. Both PSPs and SBRs have invested significant time and effort in reaching these arrangements which are supported by the Commission's regulations and rulings. The Commission should clarify that these arrangements will continue to be recognized so that the actions of WorldCom and other FBCs are not allowed to effectively undermine and nullify such arrangements.

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<sup>13</sup> See, e.g., Comments of the IPCA at 9-10; Opposition of CommuniGroup of K.C., Inc., d/b/a CGI CommuniGroup of Jackson, Inc., NTS Communications, Inc., Transtel Communications, Inc., Tel America of Salt Lake City, Inc., National Network Corporation, and Extelcom d/b/a Express Tel at 15 ("CommuniGroup"); Comments of IDT Corporation at 19-20; and Comments of ARC at 6.

**V. WORLDCOM'S PROPOSAL WOULD VEST FBCs WITH A SIGNIFICANT UNFAIR COMPETITIVE ADVANTAGE OVER SBRs**

Several commenting parties have expressed serious concern over the anti-competitive implications associated with the compensation scheme proposed by WorldCom.<sup>14</sup> CPI echoes these concerns noting that the proposed scheme under WorldCom's suggested definition of "completed call" would create a situation where FBCs would only have to pay PSP compensation for calls which are truly and literally "completed," (*i.e.*, actually answered by the called party), while competitors, such as SBRs, will have to compensate PSPs for all calls irrespective of whether each call is completed and hence compensable.<sup>15</sup> This situation will accord FBCs a significant competitive advantage over other carriers, as illustrated by ARC in its comments.<sup>16</sup> As ARC pointed out, AT&T admitted in its Petition that only 70% of all calls to its prepaid platform are completed.<sup>17</sup> Under WorldCom's proposal, AT&T will undoubtedly monitor its traffic to determine what calls are in fact completed and compensable, thus enabling it to realize at least a 30% savings over SBRs by avoiding payment for uncompleted calls. Other FBCs similarly situated to AT&T are likely to realize comparable savings in payphone compensation fees, to the detriment of both SBRs and a competitive marketplace. The Commission should ensure that a compensation scheme with such blatant anti-competitive characteristics is not allowed to be implemented.

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<sup>14</sup> See, *e.g.*, Comments of ARC at page 5-6.

<sup>15</sup> Many commenters also clearly demonstrate that such a dual scheme would be unlawfully discriminatory in violation of Section 202(a) of the Telecommunications Act of 1934. See, *e.g.*, Comments of Ascent at 11-12; Comments of the IPCA at 6; and Comments of IDT at 36-38.

<sup>16</sup> See Comments of ARC at 5 and 7.

<sup>17</sup> See *id.* at 3.



## **VI. WORLDCOM'S PROPOSAL WOULD HARM CONSUMERS AND IS NOT IN THE PUBLIC INTEREST**

The compensation scheme proposed by WorldCom would have a significant negative impact on consumers and, therefore, is not in the public interest.

Requiring SBRs to pay compensation on all calls routed to their switches irrespective of whether those calls are ultimately completed will result in significantly higher costs for SBRs. This is particularly true in the case of prepaid calling card providers such as CPI which experience a significant percentage of traffic originating at payphones.

Such higher costs will invariably force many providers to block acceptance of payphone-originated calls to avoid paying non-cost based charges on large volumes of uncompleted calls.<sup>18</sup> Given the large percentages of prepaid card traffic originated at payphones, this would likely drive many prepaid calling card providers out of business.

Other providers which elect to continue to accept payphone-originated calls would pay such non-cost based charges and attempt to pass them on to consumers in the form of higher rates or surcharges.

Either way, consumers would end up suffering. In the case of those prepaid calling card providers which do not accept calls from payphones, the value and utility of prepaid calling cards would be seriously compromised. Many consumers count on being able to use their prepaid calling

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<sup>18</sup> See, e.g., Opposition of CommuniGroup at 6, which references a study conducted by the IPCA indicating that approximately 30% of all domestic calls originating on payphones from 800 access services are uncompleted and that international completion rates range from 10% to 60% depending on the called destination. See also, Comments of IDT at 13-14, n.20, for estimates of payphone compensation cost increases in light of call completion rates. IDT believes that calls to international destinations, some of which only experience completion rates of 33%, could generate increases in effective payphone compensation rates under WorldCom's proposal of between \$0.26 to \$0.39 per call.

cards at payphones to originate calls. In the case of those providers that elect to remain in business but assess higher rates or impose surcharges, consumers would clearly bear the brunt of the non-cost based charges for uncompleted calls.

In short, the WorldCom proposal would harm consumers and is clearly not in the public interest.

## **VII. CONCLUSION**

As demonstrated above, CPI urges the Commission to reject WorldCom's proposed payphone compensation scheme consistent with the recommendations set forth above.

Respectfully submitted,



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Dated: October 22, 2001

## **CERTIFICATE OF SERVICE**

I, Hilary Taylor, a Legal Assistant with the Law Offices of Thomas K. Crowe, P.C., do hereby certify that on this 22<sup>nd</sup> day of October, 2001, a copy of the foregoing Comments of Call Processing, Inc. was served by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (\*), upon the parties listed below.

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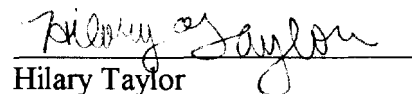
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